

1 AN ACT relating to financial transactions.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. SUBTITLE 12 OF KRS CHAPTER 286 IS ESTABLISHED,
4 AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

5 *As used in this subtitle, unless the context requires otherwise:*

6 *(1) "Check" means any check, draft, money order, personal money order, traveler's*
7 *check, or other demand instrument for the transmission or payment of money,*
8 *including any customer authorization for electronic payment;*

9 *(2) (a) "Control" means the direct or indirect power to direct or cause the direction*
10 *of the management and policies of a person, whether through ownership of*
11 *voting securities, by contract, or otherwise, except that no individual shall*
12 *be deemed to control a person solely because the individual is a director,*
13 *officer, or employee of a person.*

14 *(b) For purposes of this subsection, a person who, directly or indirectly, owns,*
15 *controls, holds the power to vote, or holds proxies representing twenty-five*
16 *percent (25%) or more of the current outstanding voting securities issued by*
17 *another person is presumed to control the other person. The commissioner*
18 *may determine whether a person, in fact, controls another person;*

19 *(3) "Controlling person" means any person in control of a licensee;*

20 *(4) "Default" means:*

21 *(a) The failure of a customer to make a required payment within a certain*
22 *number of days after the due date specified on a periodic billing statement,*
23 *as agreed upon by the licensee and the customer in the fair credit loan plan,*
24 *but only if the licensee declares the customer in default within sixty-one*
25 *(61) days after the due date on the billing statement; and*

26 *(b) The customer's failure to otherwise perform the obligations under the fair*
27 *credit loan plan;*

1 (5) "Fair credit loan" means a loan made pursuant to a fair credit loan plan;

2 (6) "Fair credit loan plan" means a written agreement subject to this subtitle
3 executed in person at a location licensed by the department within the
4 Commonwealth of Kentucky between a licensee and a customer establishing an
5 open-end credit plan that contemplates credit transactions from time to time that:

6 (a) May be unsecured or secured by personal property;

7 (b) May be without a fixed maturity date or a limitation as to the length of the
8 loan term; and

9 (c) Are subject to prepayment in whole or in part at any time without penalty;

10 (7) "Licensee" means a person licensed to offer fair credit loans pursuant to this
11 subtitle; and

12 (8) "Person" means an individual, group of individuals, partnership, association,
13 corporation, or any other business, unit, or legal entity.

14 ➔SECTION 2. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
15 IS CREATED TO READ AS FOLLOWS:

16 (1) No person shall engage in the business of making fair credit loans unless the
17 person is licensed pursuant to this subtitle. A separate license shall be required
18 for each location from which the business of making fair credit loans is
19 conducted.

20 (2) Each location licensed by the department shall be physically located in Kentucky
21 with at least one (1) full-time employee, and the address of the location shall be
22 filed with the commissioner.

23 ➔SECTION 3. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
24 IS CREATED TO READ AS FOLLOWS:

25 (1) An applicant for a license to engage in the business of making fair credit loans
26 shall meet the following requirements:

27 (a) The applicant shall have a tangible net worth that comprises tangible assets,

1 less liabilities, of at least fifty thousand dollars (\$50,000) for each location;
2 and

3 (b) The financial responsibility, financial condition, business experience,
4 character, and general fitness of the applicant shall reasonably warrant the
5 belief that the applicant's business will be conducted lawfully, honestly,
6 carefully, and efficiently. In determining whether these qualifications have
7 been met, and for the purpose of investigating compliance with this subtitle,
8 the commissioner may consider:

9 1. Any relevant business records and the capital adequacy of the
10 applicant;

11 2. The competence, experience, integrity, and financial ability of any
12 person who is a director, ten percent (10%) or more shareholder, or
13 controlling person of the applicant; and

14 3. Any record of the applicant or any person referred to in subparagraph
15 2. of this paragraph of any:

16 a. Criminal activity;

17 b. Fraud or other act of personal dishonesty;

18 c. Act, omission, or practice that constitutes a breach of a fiduciary
19 duty; or

20 d. Suspension, revocation, or removal from participation in the
21 conduct of any business by any state or federal agency or
22 department.

23 (2) The commissioner shall periodically review each licensee's compliance with
24 subsection (1) of this section.

25 ➔SECTION 4. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
26 IS CREATED TO READ AS FOLLOWS:

27 Each application for a license shall be in a form prescribed by administrative

1 regulation promulgated by the commissioner that includes the following:

2 (1) The legal name, residence, and business address of the applicant, and if the
3 applicant is a partnership, association, limited liability company, or corporation,
4 the legal name, residence, and business address of every member, officer,
5 managing employee, and director of the applicant;

6 (2) Every licensee shall maintain an agent in this Commonwealth for service of
7 process. The name, address, telephone number, and electronic mail address of
8 the agent shall be filed with the application. The commissioner shall be notified
9 in writing by the licensee at least five (5) days prior to any change in the status of
10 an agent; and

11 (3) Other data and information the commissioner may require about the applicant,
12 and its directors, trustees, officers, members, managing employees, controlling
13 persons, or agents.

14 ➔SECTION 5. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
15 IS CREATED TO READ AS FOLLOWS:

16 (1) Each application for a license required by Section 2 of this Act shall be
17 accompanied by:

18 (a) 1. A filing fee of five hundred dollars (\$500), which shall not be subject
19 to refund. If the license is granted, the filing fee shall constitute the
20 license fee for the first license year, or remaining part of a year; or

21 2. In lieu of a filing fee, the commissioner may prescribe by
22 administrative regulation a nonrefundable supervision fee.

23 The filing fee or supervision fee shall be applicable to each location;

24 (b) 1. An audited financial statement that at a minimum includes a balance
25 sheet, a statement of income or loss, and a statement of changes in
26 financial position for the immediately preceding fiscal year, prepared
27 in accordance with generally accepted accounting principles by a

1 certified public accountant or public accounting firm, neither of
2 which is affiliated with the applicant.

3 2. If the applicant does not have an audited financial statement meeting
4 the requirements of subparagraph 1. of this paragraph, it may submit
5 a financial statement of its parent if the financial statement is audited
6 in accordance with generally accepted accounting principles by a
7 certified public accountant or public accounting firm, neither of
8 which is affiliated with the applicant.

9 3. For a newly created entity, the commissioner may accept a balance
10 sheet prepared by a certified public accountant or public accounting
11 firm, neither of which is affiliated with the applicant, accompanied by
12 a projected income statement demonstrating that the applicant will
13 have adequate capital after payment of start-up costs; and

14 (c) 1. A surety bond, issued by an insurer regulated under Subtitle 9 of KRS
15 Chapter 304 and not affiliated with the applicant, in the amount of
16 twenty-five thousand dollars (\$25,000) for each location. However, the
17 aggregate amount of the surety bond required for a single licensee
18 shall not exceed two hundred thousand dollars (\$200,000).

19 2. In lieu of the surety bond, the applicant may file an irrevocable letter
20 of credit in the same amount that would be required for a surety bond,
21 issued by any federally insured bank, savings bank, or credit union
22 that is not affiliated with the applicant.

23 3. The surety bond or irrevocable letter of credit shall be in a form that is
24 satisfactory to the commissioner and shall be payable to the
25 commissioner for the benefit of any person who is injured by the
26 fraud, misrepresentation, breach of contract, or financial failure of a
27 licensee, or the violation of any provision of this subtitle by a licensee

1 in connection with a fair credit loan plan.

2 4. In the case of a surety bond, the aggregate liability of the surety bond
3 shall not exceed the principal sum of the surety bond.

4 5. In the case of an irrevocable letter of credit, applicants shall obtain
5 letters of credit for terms of not less than three (3) years and renew the
6 letters of credit annually.

7 6. If the licensee fails to pay a person or the commissioner, as required
8 by this subtitle, then the commissioner or the affected person may
9 bring suit against the licensee directly on the surety bond or
10 irrevocable letter of credit. Franklin Circuit Court shall be the
11 exclusive venue in all matters relating to this subsection on behalf of
12 those persons in either one (1) or successive actions.

13 7. The surety bond or irrevocable letter of credit shall be maintained by
14 the licensee for not less than three (3) years following the expiration,
15 revocation, or surrender of the licensee's license.

16 (2) (a) As is reasonably necessary to carry out the purposes of this subtitle, the
17 commissioner may require any of the following persons to consent to a
18 criminal history records check and to provide fingerprints with the
19 application in a form acceptable to the commissioner:

20 1. An applicant;

21 2. An individual who is a director, officer, ten percent (10%) or more
22 shareholder, or controlling person of the applicant; or

23 3. Any other individual associated with the applicant;

24 except for any shareholder of an applicant if the applicant or its parent
25 company is a publicly traded corporation. For the purposes of this
26 paragraph, "publicly traded" means having stock that is currently traded
27 on a national securities exchange registered with the federal Securities and

1 Exchange Commission or traded on an exchange in a country other than
2 the United States that is regulated by a regulator that is substantially
3 equivalent to the Securities and Exchange Commission with disclosure and
4 reporting requirements that are substantially similar to those of the
5 Securities and Exchange Commission.

6 (b) Refusal of any person to consent to a criminal history records check or to
7 provide fingerprints pursuant to this subsection constitutes grounds for the
8 commissioner to deny the applicant a license.

9 (c) Any criminal history records check conducted pursuant to this subsection
10 shall be conducted by the Kentucky State Police, the Federal Bureau of
11 Investigation, or both, and the results of the criminal history records check
12 shall be forwarded to the commissioner. All costs incurred in conducting
13 the criminal history records check shall be paid by the applicant, in addition
14 to any other fees required by this subtitle.

15 ➔SECTION 6. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
16 IS CREATED TO READ AS FOLLOWS:

17 (1) Upon the filing of the application, fee, and documents required by Sections 4 and
18 5 of this Act, the commissioner shall ascertain whether the requirements of
19 Section 3 of this Act have been satisfied. If the commissioner finds that the
20 requirements have been satisfied, and approves the documents, the commissioner
21 shall issue a license to the applicant.

22 (2) The license shall be conspicuously posted in the licensee's place of business at all
23 times.

24 (3) A license issued pursuant to this subtitle shall remain in force and effect through
25 the remainder of the year ending December 31 after its date of issuance unless
26 earlier surrendered, suspended, or revoked pursuant to this subtitle.

27 ➔SECTION 7. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286

1 IS CREATED TO READ AS FOLLOWS:

2 (1) If the commissioner determines that an applicant is not qualified to receive a
3 license, the commissioner shall notify the applicant in writing that the application
4 has been denied, stating the basis for denial.

5 (2) If the commissioner denies an application, or if the commissioner fails to act on
6 an application within ninety (90) days after the filing of a properly completed
7 application, the applicant may make a written demand to the commissioner for a
8 hearing before the commissioner on the question of whether the license should be
9 granted.

10 (3) Any hearing or review of a hearing on the denial of a license shall be conducted
11 pursuant to KRS Chapter 13B. Notwithstanding any provisions in KRS Chapter
12 13B to the contrary, the burden of proof that the applicant is entitled to a license
13 shall be on the applicant.

14 ➔SECTION 8. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
15 IS CREATED TO READ AS FOLLOWS:

16 (1) Unless otherwise extended by subsection (3) of this section, licenses issued
17 pursuant to this subtitle shall expire on December 31 of the year in which they
18 are issued. Each license may be renewed for a subsequent twelve (12) month
19 period upon receipt by the commissioner within sixty (60) days of expiration of
20 the license of:

21 (a) An application by the licensee showing continued compliance with the
22 requirements of Sections 3, 4, and 5 of this Act; and

23 (b) The payment of a license renewal fee of five hundred dollars (\$500), or if
24 established pursuant to Section 5 of this Act, the commissioner shall require
25 licensees to pay the nonrefundable supervision fee in lieu of the license
26 renewal fee.

27 (2) A licensee that submits a timely and complete application for renewal of its

1 license shall be permitted to continue to operate under its existing license until its
2 application for renewal is approved or denied.

3 (3) The commissioner may establish, by promulgation of an administrative
4 regulation, a biennial license, but the license renewal or supervision fee shall not
5 be payable for more than one (1) year at a time.

6 ➔SECTION 9. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
7 IS CREATED TO READ AS FOLLOWS:

8 (1) A license issued pursuant to this subtitle is not transferable or assignable.

9 (2) (a) The prior written approval of the commissioner is required for the
10 continued operation of a licensee whenever a change in control of the
11 licensee is proposed. The commissioner may require any information
12 deemed necessary to determine whether a new application is required.
13 Reasonable and actual costs incurred by the commissioner in investigating
14 a change of control request shall be paid by the person requesting approval.

15 (b) Whenever control is acquired or exercised in violation of this section, the
16 license or licenses of a licensee shall be deemed revoked as of the date of the
17 unlawful acquisition of control. The licensee or its controlling person shall
18 surrender the license or licenses to the commissioner on demand.

19 (3) A licensee shall notify the department at least five (5) days before any change in
20 the licensee's principal place of business, location, or name.

21 ➔SECTION 10. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
22 IS CREATED TO READ AS FOLLOWS:

23 (1) Notwithstanding any other statute to the contrary, a licensee may charge and
24 collect interest, fees, and charges in a manner consistent with this section.

25 (2) A licensee may charge and collect a periodic interest rate not to exceed twenty-
26 four percent (24%) per year.

27 (3) (a) In addition to the periodic interest rate authorized under subsection (2) of

1 this section, a licensee may also charge and collect a customary fee for each
2 fair credit loan plan to defray the ordinary costs of opening, administering,
3 and terminating the plan, including but not limited to costs associated with:

4 1. Underwriting and documenting the account;

5 2. Securing and maintaining account information;

6 3. Validating customer information;

7 4. Offering phone access to accounts;

8 5. Processing account transactions;

9 6. Responding to customer inquiries;

10 7. Providing periodic billing statements;

11 8. Inspecting, verifying, and protecting collateral, including establishing,
12 perfecting, and releasing a security interest; and

13 9. Any other services or activities conducted by the licensee under a fair
14 credit loan plan.

15 (b) The customary fee shall not be deemed interest for any purpose of law and
16 shall not exceed a daily rate of seven-tenths of one percent (0.7%) of the
17 average daily principal balance in any billing cycle.

18 (4) No fair credit loan plan shall have an outstanding principal balance in excess of
19 one thousand dollars (\$1,000) at any time.

20 (5) Each fair credit loan shall require payments:

21 (a) Set at equal intervals agreed to in advance by the parties;

22 (b) In the form of cash, money order, debit card or prepaid debit card, or any
23 other commercially reasonable instrument for payment of money, whether
24 or not negotiable, including any authorization for the electronic transfer of
25 funds by the due date of each billing cycle; and

26 (c) In an amount sufficient to reduce the outstanding principal balance by at
27 least five percent (5%) each calendar month.

1 (6) (a) If a customer defaults and the licensee refers the customer's account to an
2 attorney for collection, the licensee may, if the fair credit loan plan or the
3 security agreement or similar instrument in the case of a plan secured by
4 personal property so provides:

- 5 1. Charge and collect from the customer a reasonable attorney's fee; and
6 2. Recover from the customer all collection and court costs, including all
7 costs of enforcing the security agreement or similar instrument in the
8 case of plans secured by personal property, actually incurred by the
9 licensee, including costs incurred on appeal.

10 (b) A licensee may recover interest at the rate awarded by the court on any loan
11 in which a judgment in favor of the licensee is awarded.

12 (c) In the case of plans secured by personal property, a licensee may dispose of
13 property after default in a commercially reasonable manner in accordance
14 with KRS 355.9-610.

15 (7) If a check is returned to a licensee from a payor financial institution due to
16 insufficient funds, no licensee shall assess a handling charge against the maker
17 or drawer of the returned check.

18 ➔SECTION 11. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
19 IS CREATED TO READ AS FOLLOWS:

20 (1) (a) Prior to executing a fair credit loan plan, a licensee shall provide each
21 prospective customer with a written explanation in clear, understandable
22 language of the interest, fees, and charges to be charged by the licensee.
23 The style, content, and method of execution of the required written
24 explanation shall:

- 25 1. Comply with federal truth-in-lending laws;
26 2. Contain a statement that the customer may prepay the unpaid balance
27 in whole or in part at any time without penalty;

- 1 3. Contain a next-business-day customer's right of rescission for any
2 requested fair credit loan;
3 4. Contain a notice informing the customer that complaints may be made
4 to the department, including the department's telephone number and
5 address; and
6 5. Comply with any other state or federal law requirements.

7 (b) The commissioner may promulgate administrative regulations establishing
8 additional requirements for the written explanation required by this
9 subsection in order to ensure complete and accurate disclosure of the
10 interest, fees, and charges to be charged by a licensee under a fair credit
11 loan plan.

12 (2) Nothing in this section requires or provides the licensee with authority to require
13 a customer to draw the full amount of credit available under a fair credit loan
14 plan at any time.

15 (3) A licensee shall provide each customer with a periodic billing statement in
16 compliance with federal truth-in-lending laws.

17 ➔SECTION 12. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
18 IS CREATED TO READ AS FOLLOWS:

19 (1) Each licensee shall keep and use in its business any books, accounts, and records
20 the commissioner may require to effectuate this subtitle and the administrative
21 regulations promulgated pursuant to this subtitle. Every licensee shall preserve
22 the books, accounts, and records for at least two (2) years. Any licensee, after
23 receiving the prior written approval of the commissioner, may maintain records
24 at any location within or outside this state.

25 (2) A licensee shall not engage in unfair or deceptive acts, practices, or advertising in
26 the conduct of the licensed business.

27 (3) A customer shall not have more than one (1) outstanding fair credit loan plan at

1 any given time and the total outstanding balance shall not exceed one thousand
2 dollars (\$1,000) at any given time. Each licensee shall inquire of any customer
3 seeking a fair credit loan plan regarding the customer's outstanding fair credit
4 loan plans.

5 (4) A licensee shall not use any device or agreement, including agreements with
6 affiliated licensees, with the intent to obtain greater interest, fees, or charges than
7 otherwise authorized by this subtitle.

8 (5) A licensee shall comply with any state or federal law, rule, or regulation
9 applicable to any business authorized or conducted under this subtitle, including
10 but not limited to the federal Truth in Lending Act, 15 U.S.C. secs. 1601 et seq.,
11 the federal Equal Credit Opportunity Act, 15 U.S.C. secs. 1691 to 1691f, and the
12 federal Fair Debt Collection Practices Act, 15 U.S.C. secs. 1692 et seq.

13 (6) (a) No fair credit loan plan shall:

14 1. Provide that the law of a jurisdiction other than this state applies to
15 the plan;

16 2. Provide that the customer consents to the jurisdiction of another state
17 or foreign country;

18 3. Establish venue other than as provided in Section 5 of this Act; or

19 4. Waive any provision of this subtitle.

20 (b) Any provision described in subsection (6)(a) of this section that is contained
21 in a fair credit loan plan shall be void and shall not be enforceable as a
22 matter of public policy.

23 ➔SECTION 13. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
24 IS CREATED TO READ AS FOLLOWS:

25 Fair credit loan plans shall not be subject to or controlled by any other statute
26 governing the imposition of interest, fees, or loan charges. A licensee shall not have
27 the powers enumerated in this subtitle without first complying with the law regulating

1 the particular transaction involved, but licensees legally exercising any of the powers
2 set forth in this subtitle shall not be deemed in violation of any statute governing or
3 prohibiting usury, including but not limited to KRS 360.010.

4 ➔SECTION 14. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
5 IS CREATED TO READ AS FOLLOWS:

6 (1) The commissioner may promulgate administrative regulations for the
7 enforcement of this subtitle. A copy of any administrative regulation promulgated
8 by the commissioner pursuant to this subsection shall be mailed to the principal
9 place of business of each licensee at least thirty (30) days before the date it takes
10 effect.

11 (2) To ensure compliance with this subtitle, the commissioner may:

12 (a) Examine the relevant business, books, and records of any licensee; and

13 (b) Examine or investigate licensees and any person reasonably suspected by
14 the commissioner of conducting business that is subject to the licensing
15 requirements of this subtitle.

16 (3) (a) The commissioner may charge a fee to any person examined or investigated
17 pursuant to this section. The fee shall be reasonable and related to the
18 actual expenses of the examination or investigation. The fee shall be
19 payable in addition to all other fees, taxes, and costs required by law.

20 (b) If a supervision fee is established pursuant to Section 5 of this Act, then
21 licensees who pay the supervision fee will no longer be required to pay
22 examination expenses pursuant to this subsection for examinations that
23 occur after payment of the supervision fee.

24 (4) Any person aggrieved by the conduct of a licensee in connection with the
25 activities regulated by this subtitle may file a written complaint with the
26 commissioner who may investigate the complaint.

27 (5) In the course of any examination or investigation authorized pursuant to this

1 section, the commissioner may:

2 (a) Subpoena witnesses;

3 (b) Administer oaths;

4 (c) Examine any individual under oath or affirmation; and

5 (d) Compel the production of records, books, papers, contracts or other
6 documents relevant to the examination or investigation.

7 (6) If any person fails to comply with an action ordered by the commissioner
8 pursuant to section, the commissioner may:

9 (a) Petition any court of competent jurisdiction for enforcement of this section;
10 and

11 (b) Suspend the license of any licensee pending compliance with this section.

12 (7) The commissioner shall have exclusive administrative power to investigate any
13 and all complaints relating to the business of making fair credit loans filed by
14 any person that are not criminal in nature.

15 ➔SECTION 15. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
16 IS CREATED TO READ AS FOLLOWS:

17 (1) After notice and a hearing, the commissioner may suspend or revoke any license
18 if the commissioner finds that the licensee has knowingly or through lack of due
19 care:

20 (a) Failed to pay any fees, expenses, or costs imposed by the commissioner
21 pursuant to this subtitle;

22 (b) Committed any fraud, engaged in any dishonest activities, or made any
23 misrepresentations;

24 (c) Violated any provision of this subtitle, any administrative regulation
25 promulgated pursuant to this subtitle, or any other law in the course of the
26 licensee's dealings as a licensee;

27 (d) Made a false statement in the application for the license or failed to give a

- 1 truthful reply to a question in the application; or
2 (e) Demonstrated incompetency or untrustworthiness to act as a licensee.
3 (2) If the reason for revocation or suspension of a licensee's license at any one (1)
4 location is of general application to all locations operated by a licensee, the
5 commissioner may revoke or suspend all licenses issued to a licensee.
6 (3) A hearing shall be held on written notice given at least twenty (20) days prior to
7 the date of the hearing pursuant to KRS 13B.050 and shall be conducted in
8 accordance with KRS 13B.080.

9 ➔SECTION 16. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
10 IS CREATED TO READ AS FOLLOWS:

11 After notice and opportunity for a hearing, if the commissioner finds that a person has
12 violated this subtitle, or any administrative regulation promulgated pursuant to this
13 subtitle, the commissioner may take the following actions or any combination of such
14 actions:

- 15 (1) Order the person to cease and desist violating the subtitle or any administrative
16 regulation promulgated pursuant to this subtitle;
17 (2) Require the refund of any fees collected by the person in violation of this subtitle;
18 or
19 (3) Order the person to pay to the commissioner a civil penalty of not more than one
20 thousand dollars (\$1,000) for each transaction in violation of this subtitle or for
21 each day that a violation occurs or continues.

22 ➔SECTION 17. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
23 IS CREATED TO READ AS FOLLOWS:

- 24 (1) After notice and opportunity for a hearing, the commissioner may censure,
25 suspend for a period not to exceed twelve (12) months, or bar a person from any
26 position of employment, management, or control of a licensee, if the
27 commissioner finds that the:

1 (a) Censure, suspension, or bar is in the public interest and that the person has
2 committed or caused a violation of this subtitle, any administrative
3 regulation promulgated pursuant to this subtitle, or any order of the
4 commissioner; or

5 (b) Person has been:

6 1. Convicted or pled guilty to, or pled nolo contendere to, any crime; or

7 2. Held liable in any civil action by final judgment or any administrative
8 judgment by any public agency;

9 if the criminal, civil, or administrative judgment involved any offense
10 reasonably related to the qualifications, functions, or duties of a licensee.

11 (2) Persons suspended or barred pursuant to this section are prohibited from
12 participating in any business activity of a licensee and from engaging in any
13 business activity on the premises where a licensee is conducting its business. This
14 subsection shall not be construed to prohibit suspended or barred persons from
15 having their personal transactions processed by a licensee.

16 ➔SECTION 18. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
17 IS CREATED TO READ AS FOLLOWS:

18 (1) The commissioner may enter into a consent order at any time with any person to
19 resolve any matter arising under this subtitle. A consent order shall be signed by
20 the person to whom it is issued, or a duly authorized representative, and shall
21 indicate agreement to the terms contained in the order. A consent order need not
22 constitute an admission by any person that any provision of this subtitle, or any
23 administrative regulation or order promulgated or issued pursuant to this
24 subtitle, has been violated, nor need it constitute a finding by the commissioner
25 that the person has violated this subtitle, or any administrative regulation or
26 order issued pursuant to this subtitle.

27 (2) Notwithstanding the issuance of a consent order, the commissioner may seek civil

1 penalties and make referrals to criminal law enforcement authorities concerning
2 matters encompassed by the consent order.

3 (3) In cases involving extraordinary circumstances requiring immediate action, the
4 commissioner may take any enforcement action authorized by this subtitle
5 without providing the opportunity for a prior hearing, but shall promptly afford a
6 hearing upon an application to rescind the action taken that is filed with the
7 commissioner within twenty (20) days after receipt of the notice of the
8 commissioner's emergency action.

9 ➔SECTION 19. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
10 IS CREATED TO READ AS FOLLOWS:

11 Within fifteen (15) days of the occurrence of any one (1) of the following events, a
12 licensee shall file a written report with the commissioner describing the event and its
13 expected impact on the activities of the licensee in this state;

14 (1) The filing for bankruptcy or reorganization by the licensee;

15 (2) The institution of revocation or suspension proceedings against the licensee by
16 any state or governmental authority;

17 (3) The denial of the opportunity to engage in the business of making loans by any
18 state or governmental authority;

19 (4) Any felony indictment of the licensee or any of its directors, officers, or
20 controlling persons;

21 (5) Any felony conviction of the licensee or any of its directors, officers, or
22 controlling persons; and

23 (6) Other events that the commissioner may determine and identify by administrative
24 regulation.

25 ➔SECTION 20. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
26 IS CREATED TO READ AS FOLLOWS:

27 (1) Each licensee shall file an annual report with the commissioner on the date the

1 licensee files the renewal application required in Section 8 of this Act containing
2 the following information:

3 (a) The names and addresses of controlling persons;

4 (b) The location of all places of business operated by the licensee and the
5 nature of the business conducted at each location;

6 (c) The names and addresses of all affiliated entities regulated under this title
7 doing business in this state;

8 (d) 1. An audited financial statement that includes a balance sheet,
9 statement of income or loss, and statement of changes in financial
10 position for the immediately preceding fiscal year end prepared in
11 accordance with generally accepted accounting principles by a
12 certified public accountant or public accounting firm, neither of
13 which is affiliated with the licensee.

14 2. If the licensee does not have an audited financial statement meeting
15 the requirements of subparagraph 1. of this paragraph, it may submit
16 a financial statement of its parent if the financial statement is audited
17 in accordance with generally accepted accounting principles by a
18 certified public accountant or public accounting firm, neither of
19 which is affiliated with the licensee.

20 3. For a newly created entity, the commissioner may accept a balance
21 sheet prepared by a certified public accountant or public accounting
22 firm, neither of which is affiliated with the licensee, accompanied by a
23 projected income statement demonstrating that the licensee will have
24 adequate capital after payment of start-up costs; and

25 (e) 1. If the licensee is a corporation, the names and addresses of its officers
26 and directors.

27 2. If the licensee is a partnership, the names and addresses of its

1 partners.

2 3. If the licensee is a limited liability company, the names and addresses
3 of its board of governors or managers.

4 (2) If the licensee holds two (2) or more licenses or is affiliated with other licensees,
5 a composite report may be filed, but shall not be required.

6 (3) The annual report shall be filed in a form that may reasonably be required by the
7 commissioner and shall be sworn to by a responsible officer of the licensee. These
8 reports are recognized as being proprietary and containing trade secrets. All
9 documents, materials, or other information submitted by a licensee pursuant to
10 this section shall be confidential by law and privileged, shall not be subject to
11 disclosure under the Kentucky Open Records Act, KRS 61.872 to 61.884, and
12 shall not be subject to subpoena, discovery, or admission as evidence in any
13 private civil action. However, the commissioner is authorized to use the
14 documents, materials, or other information in furtherance of any regulatory or
15 legal action brought as a part of the commissioner's official duties.

16 (4) On or before August 1 of each year, the commissioner shall prepare and submit
17 to the Governor and the Interim Joint Committee on Banking and Insurance an
18 analysis and recapitulation of the annual reports submitted pursuant to this
19 section for the preceding calendar year for the purpose of reflecting the general
20 results of operations conducted pursuant to this subtitle.

21 ➔SECTION 21. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
22 IS CREATED TO READ AS FOLLOWS:

23 (1) In addition to any other authority conferred upon the commissioner by law, the
24 commissioner is authorized to require persons subject to this subtitle to be
25 licensed through a multistate automated licensing system. Pursuant to this
26 authority, the commissioner may:

27 (a) Promulgate administrative regulations that are reasonably necessary for

1 participation in, transition to, or operation of a multistate automated
2 licensing system;

3 (b) Establish relationships or enter into agreements that are reasonably
4 necessary for participation in, transition to, or operation of a multistate
5 automated licensing system. The agreements may include but are not
6 limited to operating agreements, information sharing agreements, interstate
7 cooperative agreements, and technology licensing agreements;

8 (c) Require that applications for licensing under this subtitle and renewals of
9 licenses be filed with a multistate automated licensing system;

10 (d) Require that any fees required to be paid pursuant to this subtitle be paid
11 through a multistate automated licensing system;

12 (e) Establish deadlines for transitioning licensees to a multistate automated
13 licensing system;

14 (f) Deny any applications or renewal applications not filed with a multistate
15 automated licensing system after the deadlines established pursuant to
16 paragraph (e) of this subsection have passed, notwithstanding any dates
17 established elsewhere in this subtitle, but only if the commissioner has
18 provided reasonable notice of any transition deadlines to licensees; and

19 (g) Take any further actions as are reasonably necessary to give effect to this
20 section.

21 (2) Nothing in this section shall authorize the commissioner to require a person who
22 is not subject to this subtitle to submit information to, or to participate in, a
23 multistate automated licensing system that is operated, or participated in,
24 pursuant to this subtitle.

25 (3) Notwithstanding this section, the commissioner retains full authority and
26 discretion to license persons under this subtitle and to enforce this subtitle to its
27 fullest extent. Nothing in this section shall be deemed to be a reduction or

1 derogation of that authority and discretion.

2 (4) Applicants for and holders of licenses issued pursuant to this subtitle shall pay all
3 costs associated with submitting an application to or transitioning a license to a
4 multistate automated licensing system, as well as all costs required by a multistate
5 automated licensing system for maintaining and renewing any license issued by
6 the commissioner on a multistate automated licensing system.

7 (5) The commissioner is authorized to use a multistate automated licensing system as
8 an agent for channeling information, whether criminal or noncriminal in nature,
9 whether derived from or distributed to the United States Department of Justice or
10 any other state or federal governmental agency, or any other source, that the
11 commissioner is authorized to request from, or distribute to, pursuant to this
12 subtitle.

13 ➔SECTION 22. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
14 IS CREATED TO READ AS FOLLOWS:

15 (1) The requirements under any federal or state law regarding the privacy or
16 confidentiality of any information or material provided to a multistate automated
17 licensing system, and any privilege arising under federal or state law, including
18 the rules of any federal or state court with respect to such information or
19 material, shall continue to apply to the information or material after the
20 information or material has been disclosed to a multistate automated licensing
21 system. The information or material may be shared with all state and federal
22 regulatory officials with consumer credit oversight authority without the loss of
23 privilege or the loss of confidentiality protections provided by federal or state law,
24 including the protection available under the Kentucky Open Records Act, KRS
25 61.871 to 61.884.

26 (2) For purposes of subsection (1) of this section, the commissioner is authorized to
27 enter into agreements or sharing agreements with other governmental agencies,

1 the Conference of State Bank Supervisors, or other associations representing
2 governmental agencies as established by administrative regulation or order of the
3 commissioner.

4 (3) Information or material that is subject to a privilege or is confidential pursuant to
5 subsection (1) of this section shall not be subject to:

6 (a) Disclosure under any federal or state law governing disclosure to the public
7 of information held by an officer or any agency of the federal government
8 or the respective state; or

9 (b) Subpoena, discovery, or admission into evidence in any private civil action
10 or administrative process, unless the person to whom the information or
11 material pertains waives the confidentiality or privilege.

12 (4) This section shall supersede any inconsistent provisions of the Kentucky Open
13 Records Act, KRS 61.871 to 61.884, pertaining to records that are open to public
14 inspection.

15 (5) This section shall not apply to information or material relating to publicly
16 adjudicated disciplinary and enforcement actions against persons subject to this
17 subtitle that is included in a multistate automated licensing system for access by
18 the public.

19 ➔SECTION 23. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
20 IS CREATED TO READ AS FOLLOWS:

21 (1) The commissioner shall, on or before October 1, 2018, implement a common
22 database with real-time access through an Internet connection for licensees as
23 provided in this section unless implementing the database by that date would be
24 financially impracticable for the commissioner to design and operate a database
25 or because the commissioner has not entered into a contract with a qualified
26 third-party provider.

27 (2) The database shall be accessible to the department and to licensees to verify

1 whether any fair credit loan plans are outstanding for a particular person.

2 (3) A licensee shall accurately and promptly submit the following data before
3 entering into each fair credit loan plan in a format that the commissioner may
4 require by administrative regulation or order:

5 (a) The customer's name;

6 (b) The customer's Social Security number or employment authorization alien
7 number;

8 (c) The customer's address;

9 (d) The customer's driver's license number;

10 (e) The amount of the fair credit loan plan;

11 (f) The date of the fair credit loan plan;

12 (g) The date that the completed fair credit loan plan is closed; and

13 (h) Any additional information required by the commissioner.

14 (4) The commissioner may promulgate administrative regulations to ensure that the
15 database is used by licensees in accordance with this subtitle.

16 (5) The commissioner shall impose a fee of one dollar (\$1) per fair credit loan plan
17 for data required to be submitted by a licensee, which fee may be charged to the
18 customer.

19 (6) The commissioner may operate the database described in subsection (1) of this
20 section or may select and contract with a third-party provider to operate the
21 database. If the commissioner contracts with a third-party provider for the
22 operation of the database, all of the following apply:

23 (a) The commissioner shall ensure that the third-party provider selected as the
24 database provider operates the database pursuant to the provisions of this
25 subtitle;

26 (b) The commissioner shall consider cost of service and ability to meet all the
27 requirements of this subtitle in selecting a third-party provider as the

1 database provider;

2 (c) In selecting a third-party provider to act as the database provider, the
3 commissioner shall give strong consideration to the third-party provider's
4 ability to prevent fraud, abuse, and other unlawful activities and to provide
5 additional tools for the administration and enforcement of this subtitle;

6 (d) The third-party provider shall use the data collected pursuant to this section
7 only as prescribed in this subtitle and in the contract with the department
8 and for no other purpose;

9 (e) If the third-party provider violates this subtitle, the commissioner may
10 terminate the contract and the third-party provider may be barred from
11 becoming a party to any other state contracts;

12 (f) A person injured by the third-party provider's violation of this subtitle may
13 maintain a civil cause of action against the third-party provider and may
14 recover actual damages plus reasonable attorney's fees and court costs; and

15 (g) The commissioner may require that the third-party provider collect the fee
16 assessed under subsection (5) of this section from the licensee. The third-
17 party provider shall remit the fee collected from the licensee to the
18 commissioner no later than the first day of each month. The third-party
19 provider shall deposit any fee collected in a separate escrow account in a
20 federally insured financial institution and shall hold the fee deposited in
21 trust for the Commonwealth of Kentucky.

22 (7) The database described in subsection (1) of this section shall allow a licensee
23 accessing the database to do all of the following:

24 (a) Verify whether a customer has any open fair credit loan plans with any
25 licensee that have not been closed;

26 (b) Provide information necessary to ensure licensee compliance with any
27 requirements imposed by the United States Department of Treasury's Office

1 of Foreign Assets Control and Financial Crimes Enforcement Network;
2 and

3 (c) Track and monitor the number of customers who notify a licensee of
4 violations of this subtitle, the number of times a licensee agreed that a
5 violation occurred, the number of times that a licensee did not agree that a
6 violation occurred, the amount of restitution paid, and any other
7 information the commissioner may require by administrative regulation or
8 order.

9 (8) While operating the database, the database provider shall:

10 (a) Establish and maintain a process for responding to fair credit loan plan
11 verification requests when technical difficulties occur with the database that
12 prevent the licensee from accessing the database through the Internet;

13 (b) Comply with any applicable federal and state provisions to prevent identity
14 theft;

15 (c) Provide accurate and secure receipt, transmission, and storage of customer
16 data; and

17 (d) Meet the requirements of this subtitle.

18 (9) When the database provider receives notification that a fair credit loan plan has
19 been closed, the database provider shall designate the fair credit loan plan as
20 closed in the database immediately, but in no event after 11:59 p.m. on the day
21 the database provider receives notification.

22 (10) (a) The database provider shall automatically designate a fair credit loan plan
23 as closed in the database five (5) days after the fair credit loan plan maturity
24 date unless a licensee reports to the database provider before that time that
25 the loan remains open because:

26 1. The customer failed to make payment;

27 2. The customer's check is in the process of clearing the banking system;

1 3. The fair credit loan plan remains open because the customer's check
2 is being returned to the licensee for insufficient funds, a closed
3 account, or a stop payment order; or

4 4. Any other factors determined by the commissioner.

5 (b) If a licensee reports the status of a fair credit loan plan as open in a timely
6 manner, the fair credit loan plan remains open until it is closed and the
7 database provider is notified that the fair credit loan plan is closed.

8 (11) If a licensee stops making fair credit loan plans:

9 (a) The database provider shall designate all open fair credit loan plans with
10 that licensee as closed in the database sixty (60) days after the date the
11 licensee stops making fair credit loan plans, unless the licensee reports to
12 the database provider before the expiration of the sixty (60) day period
13 which of its fair credit loan plans remain open and the specific reason each
14 fair credit loan plan remains open.

15 (b) The licensee shall provide to the commissioner a reasonably acceptable
16 proposal that outlines how the licensee will continue to update the database
17 after it stops making fair credit loan plans. The commissioner shall
18 promptly approve or disapprove the proposal and immediately notify the
19 licensee of the commissioner's decision. If the proposal is disapproved, the
20 licensee may submit a new proposal or may submit a modified proposal for
21 the licensee to follow. If at any time the commissioner reasonably
22 determines that a licensee that has stopped offering fair credit loan plans is
23 not updating the database in accordance with its approved proposal, the
24 commissioner shall immediately close or instruct the database provider to
25 immediately close all remaining open fair credit loan plans of that licensee.

26 (12) (a) The response to an inquiry to the database provider by a licensee shall state
27 only that a person is eligible or ineligible for a new fair credit loan plan and

1 describe the reason for that determination. Only the person seeking the fair
2 credit loan plan may make a direct inquiry to the database provider to
3 request a more detailed explanation of a particular fair credit loan plan that
4 was the basis for the ineligibility determination.

5 (b) Any information regarding any person's fair credit loan plan history:

6 1. Is confidential;

7 2. Is not subject to public inspection;

8 3. Is not a public record subject to the disclosure requirements of the
9 Kentucky Open Records Act, KRS 61.870 to 61.884;

10 4. Is not subject to discovery, subpoena, or other compulsory process,
11 except in an administrative or legal action arising under this subtitle;
12 and

13 5. Shall not be disclosed to any person other than the commissioner.

14 (13) The commissioner may access the database provided pursuant to subsection (1)
15 of this section only for purposes of an investigation or examination of, or
16 enforcement action concerning, a database provider, licensee, customer, or other
17 person.

18 (14) The commissioner shall not delegate his or her responsibilities to investigate
19 violations of and enforce this subtitle to any third-party provider.

20 (15) (a) The commissioner shall make a determination that the database is fully
21 operational and shall send written notification to each licensee:

22 1. That the database has been implemented; and

23 2. The exact date that the database shall be considered operational for
24 the data entry requirement established in paragraph (b) of this
25 subsection.

26 (b) A licensee shall promptly and accurately enter into the database all fair
27 credit loan plans undertaken by the licensee upon receipt of the written

1 notification established in paragraph (a) of this subsection.

2 (16) The commissioner may by administrative regulation or order:

3 (a) Require that data be retained in the database only as required to ensure
4 licensee compliance with this subtitle;

5 (b) Require that customers' fair credit loan plan data in the database are
6 archived within three hundred sixty-five (365) days after each customer's
7 fair credit loan plan is closed unless needed for a pending enforcement or
8 legal action;

9 (c) Require that any identifying customer information is deleted from the
10 database when data is archived; and

11 (d) Require that data in the database concerning a customer's fair credit loan
12 plan is deleted from the database three (3) years after the customer's fair
13 credit loan plan is closed or, if any administrative, legal, or law enforcement
14 action is pending, three (3) years after the administrative, legal, or law
15 enforcement action is completed, whichever is later.

16 (17) The commissioner may maintain access to data archived under subsection (16) of
17 this section for examination, investigation, or legislative or policy review.

18 (18) A licensee may rely on the information contained in the database as accurate and
19 is not subject to any administrative penalty or civil liability as a result of relying
20 on inaccurate information contained in the database, but only if the licensee
21 accurately and promptly submits the data required pursuant to this section before
22 entering into a fair credit loan plan with a customer.

23 (19) The commissioner may use the database to administer and enforce this subtitle.

24 (20) The commissioner may require the database provider to file a report by March 1
25 of each year containing the following information as of December 31 for the
26 previous calendar year:

27 (a) The total number and dollar amount of fair credit loan plans entered;

1 (b) The total number and dollar amount of fair credit loan plans outstanding;

2 (c) The total dollar amount of fees collected for fair credit loan plans;

3 (d) The minimum, maximum, and average dollar amount of fair credit loan
4 plans entered into, the total dollar amount of the net charge-offs and write-
5 offs, and the net recoveries of licensees;

6 (e) The average fair credit loan plan amount, the average number of fair credit
7 loan plans, and the average aggregate fair credit loan plan amount entered
8 into per customer;

9 (f) The average number of days a customer was engaged in a fair credit loan
10 plan; and

11 (g) An estimate of the average total fees paid per customer for fair credit loan
12 plans.

13 (21) Enforcement of this section shall be effective ninety (90) days after the database
14 implementation date established by the commissioner as set forth in subsection
15 (15) of this section.

16 ➔SECTION 24. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
17 IS CREATED TO READ AS FOLLOWS:

18 Local government units including but not limited to cities and counties shall have no
19 authority to regulate the business of making fair credit loans.

20 ➔SECTION 25. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
21 IS CREATED TO READ AS FOLLOWS:

22 A license under this subtitle shall be available to all persons who are chartered,
23 organized, or licensed pursuant to any subtitle of KRS Chapter 286 as of January 1,
24 2017, and who submit an application meeting the requirements of this subtitle prior to
25 September 30, 2018.

26 ➔SECTION 26. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
27 IS CREATED TO READ AS FOLLOWS:

1 ***This subtitle shall be known and may be cited as the "Kentucky Fair Credit Act."***

2 ➔SECTION 27. A NEW SECTION OF SUBTITLE 1 OF KRS CHAPTER 286
3 IS CREATED TO READ AS FOLLOWS:

4 ***As used in this chapter:***

5 ***(1) "Commissioner" means the commissioner of the Department of Financial***
6 ***Institutions or the commissioner's designee; and***

7 ***(2) "Department" means the Department of Financial Institutions.***

8 ➔Section 28. KRS 286.1-011 is amended to read as follows:

9 (1) There is created within the Public Protection Cabinet a Department of Financial
10 Institutions, which shall be headed by a commissioner of financial institutions, who
11 shall be the executive head of the department and shall be charged with the
12 administration of the department.

13 (2) The Department of Financial Institutions shall exercise all administrative functions
14 of the state in relation to the regulation, supervision, chartering, and licensing of
15 ***persons regulated pursuant to this chapter and KRS Chapter 292***~~[banks, trust~~
16 ~~companies, savings and loan associations, consumer loan companies, investment~~
17 ~~and industrial loan companies, and credit unions, and in relation to the regulation of~~
18 ~~securities].~~

19 (3) There are established within the Department of Financial Institutions the following
20 divisions:

21 (a) The Division of Depository Institutions, which shall be headed by a director
22 appointed by the secretary of the Public Protection Cabinet in accordance with
23 KRS 12.050. The division shall consist of entities deemed appropriate by the
24 director;

25 (b) The Division of Non-Depository Institutions, which shall be headed by a
26 director appointed by the secretary of the Public Protection Cabinet in
27 accordance with KRS 12.050. The division shall consist of entities deemed

1 appropriate by the director; and

2 (c) The Division of Securities, which shall be headed by a director appointed by
3 the secretary of the Public Protection Cabinet in accordance with KRS 12.050.

4 The division shall consist of entities deemed appropriate by the director.

5 (4) The department may accept any application or other document required to be filed
6 with the department in electronic format or in any other technology acceptable to
7 the department.

8 ➔Section 29. This Act takes effect on January 1, 2018.